

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1792

CARL KEITH KISTNER,

Plaintiff - Appellant,

versus

PERMATILE CONCRETE PRODUCTS, d/b/a Joe Joe
Rainero Tile Company, Incorporated, d/b/a Joe
Rainero,

Defendant - Appellee.

Appeal from the United States District Court for the Western
District of Virginia, at Abingdon. Glen M. Williams, Senior
District Judge. (CA-03-74-3)

Submitted: January 28, 2005

Decided: February 22, 2005

Before LUTTIG, GREGORY, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Hilary K. Johnson, Abingdon, Virginia, for Appellant. Christen W.
Burkholder, CHRISTEN W. BURKHOLDER, P.C., Bristol, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Carl Keith Kistner appeals the district court's order granting summary judgment in favor of the Defendant in his Title VII action. We have reviewed the record and find no reversible error. Accordingly, we affirm substantially on the reasoning of the district court.* See Kistner v. Permatile Concrete Prods., No. CA-03-74-3 (W.D. Va. May 26, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

*While we note the district court's citation to the "pretext plus" standard that has been overruled in Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146-49 (2000), we find no harmful error in this case as the evidence was insufficient to establish pretext even under Reeves, and because the issue was not raised on appeal and is therefore waived. See Canady v. Crestar Mortgage Corp., 109 F.3d 969, 973-74 (4th Cir. 1997).